STATEMENT OF EMERGENCY

907 KAR 1:038E

(1) This emergency administrative regulation is being promulgated to enable the Department for Medicaid Services to impose limitations on hearing and vision services in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program that tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs, family choices is designed for children, global choices is the basic coverage plan and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

(2) This action must be taken on an emergency basis to ensure the viability of the Medicaid program in conjunction with 907 KAR 1:900E.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation except that the emergency regulation explicitly states August 1, 2006 as the effective date for establishing clinical criteria pursuant to 907 KAR 3:130 for authorization purposes. The effective date is inappropriate for the ordinary administrative regulation given that it will not be adopted by August 1, 2006.

_____
Ernie Fletcher
Governor

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Mark D. Birdwhistell, Secretary
Cabinet for Health and Family Services

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Physician and Special Services

(Emergency Amendment)

907 KAR 1:038E. Hearing and vision program services.

RELATES TO: KRS 205.520, 42 C.F.R. 440.140, 441.30, 447.53, 457.310, 42 U.S.C. 1396a, b, d, Section 1902(a) of the Social Security Act, Section 1925 of the Social Security Act

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), Public Law 109-171 [~~EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the program of Medical Assistance. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the hearing services and vision program services for which payment shall be made by the Medicaid Program and amends coverage in accordance with Public Law 109-171.

Section 1. Definitions.

(1) "Comprehensive choices" means a benefit package for recipients who:

(a) Meet the nursing facility patient status criteria established in 907 KAR 1:022; and

(b) Receive services through:

1. A nursing facility in accordance with 907 KAR 1:022;

2. The acquired brain injury waiver program in accordance with 907 KAR 3:090;

3. The home and community based waiver program in accordance with 907 KAR 1:160; or

4. The model waiver II program in accordance with 907 KAR 1:595.

(2) “Department” means the Department for Medicaid Services or its designee.

(3) "Emergency” means that a condition or situation requires an emergency service pursuant to 42 CFR 447.53.

(4) "Family choices" means a benefit package for children covered pursuant to:

(a) Section 1902(a)(10)(A)(i)(I) and 1931 of the Social Security Act;

(b) Section 1902(a)(52) and 1925 of the Social Security Act (excluding children eligible under Part A or E of title IV);

(c) Section 1902(a)(10)(A)(i)(IV) as described in 1902(l)(1)(B) of the Social Security Act;

(d) Section 1902(a)(10)(A)(i)(VI) as described in 1902(l)(1)(C) of the Social Security Act;

(e) Section 1902(a)(10)(A)(i)(VII) as described in 1902(l)(1)(D) of the Social Security Act; or

(f) 42 CFR 457.310.

(5) "Global choices" means the department’s default benefit package for the following

populations:

(a) Caretaker relatives of children who:

1. Receive K-TAP and are deprived due to death, incapacity or absence;

2. Do not receive K-TAP and are deprived due to death, incapacity or absence; or

3. Do not receive K-TAP and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and older who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive SSP, but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive SSP, but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. Receive SSP, but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(e) Individuals aged sixty-five (65) and older who have lost SSI or SSP benefits and are eligible for “pass through” Medicaid benefits but do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits and are eligible for “pass through” Medicaid benefits but do not meet nursing facility patient status in accordance with 907 KAR 1:022; or

(g) Disabled individuals who have lost SSI or SSP benefits and are eligible for “pass through” Medicaid benefits but do not meet nursing facility patient status in accordance with 907 KAR 1:022.

(6) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(7) "Non-emergency” means that a condition does not require an emergency service pursuant to 42 CFR 447.53

(8)“Optimum choices” means a benefit package for recipients who:

(a) Meet the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022; and

(b) Receive services through:

1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022; or

2. The supports for community living waiver program in accordance with 907 KAR 1:145.

Section 2. Coverage Criteria.

(1) Prior to the delivery of a covered hearing or vision service, the service shall be determined by the department to be:

(a) Medically necessary; and

(b) Effective August 1, 2006, clinically appropriate pursuant to the criteria established

in 907 KAR 3:130.

(2) The requirements established in subsection (1) of this section shall not apply to an emergency service.

Section 3 Hearing Services.

(1) All hearing coverage shall be limited to an individual under age twenty-one (21).

(2) Unless a recipient's health care provider demonstrates that services in excess of the following limitations are medically necessary, reimbursement for services provided by a certified audiologist to a recipient shall be limited to:

(a) One (1) complete hearing evaluation per year;

(b) One (1) hearing aid evaluation per year;

(c)1. Three (3) follow-up visits within the six (6) month period immediately following fitting of a hearing aid; and

2. A follow-up visit shall be related to the proper fit and adjustment of that hearing aid; and

(d) One (1) additional follow-up visit at least six (6) months following fitting of a hearing aid

(3) Hearing aid benefit coverage shall:

(a) Be contingent upon prior authorization granted by the department;

(b) Be for a hearing aid model recommended by a certified audiologist if the model is available through a participating hearing aid dealer; and

(c) Not exceed $1,400 per ear every thirty-six (36) months.

Section 4. Vision Program Services.

(1) Vision program coverage shall be limited to:

(a) A recipient who is under age twenty-one (21);

(b) Eyeglasses;

(c) Prescription services;

(d) Repair services made to a frame or lens; or

(e) Diagnostic services provided by an ophthalmologist or optometrist, to the extent the optometrist is licensed to perform the service and the service is covered in the ophthalmologist portion of the department's physician service program.

(2) Eyeglass coverage shall not exceed:

(a) $200 per year for a recipient in the global choices benefit package; or

(b) $400 per year for a recipient in the comprehensive choices, family choices or optimum choices benefit package.

(3) The department shall reimburse for vision care pursuant to the vision care reimbursement methodology established in 907 KAR 3:005. [~~(1) Audiological benefits. Coverage shall be limited to the following services if medically necessary in accordance with 907 KAR 3:130 and provided to a child under age twenty-one (21) by a certified audiologist:~~

~~(a) Complete hearing evaluation;~~

~~(b) Hearing aid evaluation;~~

~~(c) A maximum of three (3) follow-up visits within the six (6) month period immediately following fitting of a hearing aid, the visits to be related to the proper fit and adjustment of that hearing aid; and~~

~~(d) One (1) follow-up visit six (6) months following fitting of a hearing aid.~~

~~(2) Hearing aid benefits. Coverage shall be limited to a child under age twenty-one (21)~~

~~for a hearing aid model recommended by a certified audiologist if the model is available through a participating hearing aid dealer. A recipient shall be limited to one (1) hearing aid per ear, annually.~~

~~Section 2. Vision Program Services. (1) Coverage shall be limited to prescription services, repair services made to a frame or lens, and diagnostic services provided by an ophthalmologist or optometrist, to the extent the optometrist is licensed to perform the service and the service is covered in the ophthalmologist portion of the physician's program.~~

~~(2) Medicaid shall use the current reimbursement methodology as referenced in 907 KAR 3:005.~~

~~(3) The coverage of eyeglasses shall be limited to:~~

~~(a) A child under age twenty-one (21); and~~

~~(b) Two (2) pairs of eyeglasses per year per person.~~]

Section 5 [~~3~~]. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 6 [~~4~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Vision Program Manual, May 2006 [~~June 2001~~] edition", Department for Medicaid Services; and

(b) "The Hearing Program Manual, May 2006 [~~July 1998~~] edition", Department for

Medicaid Services.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

907 KAR 1:038E

Reviewed:

Date	J. Thomas Badgett, MD, PhD, Acting Commissioner Department for Medicaid Services
Date	Mike Burnside, Undersecretary Administrative and Fiscal Affairs

APPROVED:

Date	Mark D. Birdwhistell, Secretary Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:038E
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Stuart Owen (502-564-6204)

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to hearing and vision services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws that require provision of hearing and vision services to Kentucky's indigent citizenry.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations established in KRS 205.560(1) for the provision of medically necessary hearing and vision services to Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment establishes the use of criteria by the Department to determine the clinical appropriateness of delivered services. This amendment also limits coverage of vision services to individuals who are under twenty-one (21) years of age. The amendment further places limitations on hearing and vision services by limiting the number of hearing and hearing evaluation visits covered per year and capping the amount paid for hearing aids and eyewear. These actions are being taken in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program that tailors benefit packages to individual needs and circumstances, and emergency regulation is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs, family choices is designed for children, global choices is the basic coverage plan and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.
(b) The necessity of the amendment to this administrative regulation: This

amendment is necessary to maintain the financial viability of the Medicaid program and is enacted in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs, family choices is designed for children, global choices is the basic coverage plan and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes limitations on hearing and vision services as authorized by the Deficit Reduction Act of 2005 and the Centers for Medicare and Medicaid Services and in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages established via KyHealth Choices are comprehensive choices, family choices, global choices and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs, family choices is designed for children, global choices is the basic coverage plan and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by limiting vision coverage as authorized by the Deficit Reduction Act of 2005 and the Centers for Medicare and Medicaid Services in order to maintain the financial viability of the Medicaid program and in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances. The benefit packages established via KyHealth Choices are comprehensive choices, family choices, global choices and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs, family choices is designed for children, global choices is the basic coverage plan and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all Medicaid recipients who are subject to the new service limitations as well

as hearing and vision providers enrolled in the Medicaid program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment eliminates vision coverage under the Medicaid program for recipients twenty-one (21) years of age and older as well as establishes limitations on hearing and vision services in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances. The benefit packages established via KyHealth Choices are comprehensive choices, family choices, global choices and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs, family choices is designed for children, global choices is the basic coverage plan and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs..

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) estimates that eliminating vision services for adults will decrease expenditures by approximately $2.3 million ($1.56 million federal funds; $0.74 million state funds) annually. DMS anticipates additional savings as a result of the service limitations; however, cannot accurately predict utilization and thus savings at this time.

(b) On a continuing basis: The Department for Medicaid Services (DMS) estimates that eliminating vision services for adults will decrease expenditures by approximately $2.3 million ($1.56 million federal funds; $0.74 million state funds) annually. DMS anticipates additional savings as a result of the service limitations; however, cannot accurately predict utilization and thus savings at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? (Explain why tiering was or was not used)

This administrative regulation includes tiering in order to assist transforming the Medicaid program into one tailored to individual medical needs and circumstances in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). The transformed program provides innovative opportunities to Medicaid and Kentucky Children's Health Insurance Program (KCHIP) beneficiaries which will promote healthy lifestyles, personal accountability and responsible program governance for a healthier Commonwealth.

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COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES

907 KAR 1:038E

Summary of Material Incorporated by Reference

"The Vision Program Manual" June 2001 edition is being revised to the May 2006 edition. Section IV, Page 4.1 is amended to limit vision service coverage to individuals under age twenty-one (21). Section IV, Page 4.9 is amended to limit coverage of eyewear to $200 per year for members of the global choices health care plan and also limit coverage of eyewear to $400 per year for members of the family choices, comprehensive choices, or optimum choices health care plan. Section IV, Page 4.1a is added to reference medical necessity and criteria used to determine clinical appropriateness of services. The manual contains thirty-nine (39) pages.

"The Hearing Program Manual" July 1998 edition is being revised to the May 2006 edition. Section IV, Page 4.1 is amended to limit coverage of a complete hearing evaluation to one (1) time per year and limit coverage of a hearing aid evaluation to one (1) time per year for recipients under age twenty-one (21). Section IV, Page 4.5 is amended to limit hearing aid coverage to $1,400 per ear every thirty-six (36) months for recipients under age twenty-one (21). Section IV, Page 4.1a is added to reference medical necessity and criteria used to determine clinical appropriateness of services. The manual contains thirty-nine (39) pages. The manual contains thirty-three (33) pages.